

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE BURGOS,

Plaintiff

Case No. 2:24-cv-01359-GMN-BNW

ORDER

v.

DR. AVRAM, et al.,

Defendants

Plaintiff Jose Burgos filed this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 11 at 1.) On March 17, 2025, the Court ordered Plaintiff to file a Second Amended Complaint by April 17, 2025. (ECF No. 10.) The Court warned Plaintiff that the action could be dismissed if he failed to file a Second Amended Complaint by that deadline. (*Id.* at 7–8.) That deadline expired and Plaintiff did not file a Second Amended Complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the Defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting

1 *Malone*, 833 F.2d at 130).

2 The first two factors, the public's interest in expeditiously resolving this litigation
3 and the Court's interest in managing its docket, weigh in favor of dismissing Plaintiff's
4 claims. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal
5 because a presumption of injury arises from the occurrence of unreasonable delay in filing
6 a pleading ordered by the Court or prosecuting an action. See *Anderson v. Air West*, 542
7 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
8 cases on their merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the Court to consider whether less drastic alternatives can
10 be used to correct the party's failure that brought about the Court's need to consider
11 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
12 that considering less drastic alternatives *before* the party has disobeyed a court order
13 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
14 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
15 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
16 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
17 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
18 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
19 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
20 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until
21 and unless Plaintiff files a Second Amended Complaint, the only alternative is to enter a
22 second order setting another deadline. But the reality of repeating an ignored order is
23 that it often only delays the inevitable and further squander the Court's finite resources.
24 The circumstances here do not indicate that this case will be an exception: there is no
25 hint that Plaintiff needs additional time or evidence that he did not receive the Court's
26 Screening Order. Setting another deadline is not a meaningful alternative given these
27 circumstances. So the fifth factor favors dismissal.

28 Having thoroughly considered these dismissal factors, the Court finds that they

1 weigh in favor of dismissal. It is therefore Ordered that this action is dismissed without
2 prejudice based on Plaintiff's failure to file a Second Amended Complaint in compliance
3 with this Court's March 17, 2025, Order, and for failure to state a claim. The Clerk of
4 Court is kindly requested to enter judgment accordingly and close this case. No other
5 documents may be filed in this now-closed case. If Plaintiff wishes to pursue his claims,
6 he must file a complaint in a new case.

7 It is further Ordered that Plaintiff's Application to Proceed *In Forma Pauperis* (ECF
8 No. 4) is granted. Plaintiff is not required to pay an initial installment fee, but the full \$350
9 filing fee will still be paid in installments under 28 U.S.C. § 1915.

10 It is further Ordered that, under 28 U.S.C. § 1915, the Nevada Department of
11 Corrections will forward payments from the account of **Jose Burgos, #1281311** to the
12 Clerk of the United States District Court, District of Nevada, at a rate of 20% of the
13 preceding month's deposits (in months that the account exceeds \$10.00) until the full
14 \$350 filing fee has been paid for this action. The Clerk of Court is kindly requested to
15 send a copy of this Order to the Finance Division of the Clerk's Office and to the **Chief of**
16 **Inmate Services for the Nevada Department of Corrections** at
17 **formapauperis@doc.nv.gov**.

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19 DATED: May 1, 2025

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22 _____
23 Gloria M. Navarro, Judge
24 United States District Court
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